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SACRAMENTO UPDATE

This memorandum contains six pursuits of County position on climate change legislation relating to: 1) housing and land use; 2) peripheral canal; 3) transportation; 4) public works contracts; 5) extended producer responsibility; and 6) polystyrene food containers.

Pursuit of County Position on Climate Change Legislation

AB 542 (Allen), as introduced on February 16, 2011, would increase the number of housing opportunities by expanding the number of land sites deemed suitable for residential development that can accommodate some portion of the city's or county's regional housing need by income level.

Existing law requires a city or county to prepare a general plan which must include a housing element containing an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs. The law requires this assessment and inventory to contain an inventory of land suitable for residential development. A city or county must determine whether each site in the inventory of land suitable for residential development can accommodate some portion of the city's or county's share of the regional housing need by income level and the number of housing units that can be accommodated on each site.

Current law specifies the densities that are appropriate to accommodate housing for lower-income households, including: 1) sites allowing at least 15 units per acre for incorporated cities within nonmetropolitan counties and for nonmetropolitan counties that have micropolitan areas; 2) sites allowing at least 10 units per acre for unincorporated areas in all nonmetropolitan counties; 3) sites allowing at least 20 units per acre for suburban jurisdictions; and 4) sites allowing at least 30 units per acre for jurisdictions in metropolitan counties.

Specifically, AB 542 would require densities less than those specified above to be deemed appropriate to accommodate low-income housing, if the site is owned by the city or county planning agency and set aside for affordable housing development, or if the planning agency has offered to provide subsidies of at least an unspecified amount per unit for affordable housing construction.

The Department of Regional Planning (DRP) indicates that AB 542 recognizes sites that are publicly-owned and set aside for affordable housing and projects that are publicly-subsidized to be deemed appropriate to accommodate housing for lower-income households and included in the adequate sites inventory, even if the allowable densities may not be considered high. DRP indicates that the bill would benefit the County and other local jurisdictions as more sites can be included in the adequate sites inventory of the housing element.

However, DRP states that AB 542 only specifically mentions sites that are owned by a planning agency and subsidies offered by a planning agency, but agencies that offer affordable housing subsidies and own land for affordable housing vary depending on the local jurisdictions. As the planning agency of the County, DRP neither owns any properties nor provides subsidies to any affordable housing construction. In Los Angeles County, the Community Development Commission (CDC) is the housing authority and redevelopment agency that owns properties set aside for affordable housing and provides subsidies to affordable housing construction through various programs. DRP supports the intent of AB 542, but indicates that it should be amended to replace "planning agency" in the bill with "local jurisdiction."

The Community Development Commission has also reviewed AB 542 and indicates the bill would enable increased housing opportunities to be included in the housing element, but it also limits the provisions to a planning agency. The CDC is also supportive of AB 542 because of the increased housing opportunities, but also recommends that it be amended to replace "planning agency" with "local jurisdiction."

The Community Development Commission, the Department of Regional Planning, and this office recommend that the County support AB 542. Support for AB 542 is consistent with existing policy to support proposals that provide incentives to local

governments and/or developers to increase and protect affordable housing and flexibility for counties to promote a diversity of affordable housing types through local policies. Therefore, **the Sacramento advocates will support AB 542, and request that it be amended to replace "planning agency" with "local jurisdiction."**

Support and opposition to AB 542 is unknown. This measure is set for a hearing in the Assembly Local Government Committee on April 6, 2011.

AB 550 (Huber), as introduced on February 16, 2011, would prohibit: 1) the construction of a peripheral canal from the Sacramento River to a point south of the Sacramento-San Joaquin Delta, unless expressly authorized by the State Legislature; and 2) the construction and operation of a peripheral canal from diminishing or negatively affecting the water supplies, water rights, or quality of water for water users within the Sacramento-San Joaquin Delta watershed, or imposing any new burdens on infrastructure within, or financial burdens on persons residing in the Delta or the Delta watershed.

The Department of Public Works (DPW) indicates that AB 550 establishes unreasonably high hurdles to gain approval from the Legislature for construction and operation of a peripheral canal by conditioning the construction of the peripheral canal with the requirement to not diminish or negatively affect in any way the water supplies, water rights, or water quality for water users in the Delta or the entire Delta watershed. AB 550 also undermines SBx7 1 (Chapter 5 of 2009, Seventh Special Session), the landmark Delta legislation which brokered a compromise to achieve the two coequal goals of providing a more reliable water supply for California, and protecting, restoring and enhancing the Delta ecosystem. DPW states that this bill tips the balance away from the goal of providing reliable water supply to residents south of the Delta and would negatively affect water supplies to Los Angeles County residents by focusing only on one of the two coequal goals discussed above.

According to DPW, the direct impact of AB 550 would be to impede the progress toward constructing a new Delta conveyance system or peripheral canal that would supply water to the State Water Project (SWP) which provides water supplies to approximately one-third of Southern California residents. Specifically, Los Angeles County Waterworks District No. 29, District No. 36, and Marina del Rey Water System receive nearly all their water supply from the SWP. Los Angeles County Waterworks District No. 40, which serves approximately 200,000 residents, receives 70 to 90 percent of its water supplies from the SWP.

The Department of Public Works and this office recommend that the County oppose AB 550. The County has existing policy to support: 1) a reliable statewide stormwater capture, storage, and conveyance system to deliver water supplies to Southern

California; 2) the coequal goals of a sustainable Delta ecosystem and reliable water supply; 3) legislation to improve the reliability of water imported into Los Angeles County; and 4) proposals which would improve the reliability, quality, quantity, and security of water supplies for Los Angeles County. Because AB 550 is contrary to our existing water policies, opposition to AB 550 is consistent with existing County policy. Therefore, **the Sacramento advocates will oppose AB 550**.

Support for AB 550 is unknown. It is opposed by the Metropolitan Municipal Water District of Southern California. This measure is currently in the Assembly Water, Park and Wildlife Committee awaiting a hearing date.

AB 720 (Hall), as introduced on February 17, 2011, would eliminate the ability of counties who have elected to be subject to the Uniform Public Construction Cost Accounting Act (UPCCAA) to use Road Commissioner authority granted under Public Contract Code (PCC) Section 20395 which allows counties to use their own employees to perform work on county highways. The bill would also increase from $30,000 to $45,000 the total cost of a project that is allowed to be performed by employees of a public agency that has elected to be under the UPCCAA.

According to the California State Association of Counties (CSAC), the UPCCAA allows local agencies to perform public project work up to $30,000 with its own workforce if the agency elects to follow specific cost accounting procedures. In exchange for following these specific accounting procedures that provide greater accountability and transparency, local agencies have additional contracting flexibility, higher thresholds, and an alternative bidding procedure when an agency performs public project work by contract.

Since county Road Commissioner authority, which has been in existence since 1935, provides county transportation departments the necessary flexibility to address local issues such as natural disasters or emergencies, as well as routine maintenance, the UPCCAA allows counties to retain critical flexibility and authority as granted under PCC Section 20395(c) while a part of the UPCCAA.

Thirty-two counties in the State are currently under the UPCCAA, which provides benefits such as the informal bidding process which is used by various departments in addition to county public works departments to keep project costs to a minimum. However, CSAC indicates that Road Commissioner authority, as provided for in PCC Section 20395, is still necessary to ensure counties' ability to perform work on county highways in a timely, efficient, and cost-effective manner.

Specifically, AB 720 would require the 32 counties under the UPCCAA to give up the benefits of the UPCCAA, used by many other county departments, in order to retain critical Road Commissioner authority for transportation-related purposes. It would essentially force the 32 counties affected to choose between their overall county authority under the UPCCAA or Road Commissioner authority. County transportation departments would be restricted to the proposed $45,000 force account limit under the UPCCAA, or convince all other departments to give up their flexibility under the UPCCAA to exercise Road Commissioner authority.

The Department of Public Works indicates that because the County has not elected to become subject to the UPCCAA, AB 720 would not directly affect the department's existing operations. However, DPW has serious concerns about AB 720 because the County has many functions in addition to maintaining streets, roads and highways operating safely. DPW indicates that should there be a need for the County to adopt and use the UPCCAA in the future, AB 720 would limit the flexibility and alternatives that currently exist for counties to utilize both the UPCCAA and Section 20395 of the PCC, which authorizes work on county highways to be done by purchasing the material and having the work done by day labor.

According to DPW, a county may elect to use the UPCCAA for other projects (airports, buildings, infrastructure, etc.) including: construction, reconstruction, repair, erection, demolition, and improvement, while separately and independently using Section 20395 of the PCC for work on highways. Therefore, DPW states that AB 720 would eliminate the existing flexibility that counties have to select the optimal methods available to fulfill their mission and meet the diverse needs of county residents. DPW strongly believes that counties should maintain the current flexibility in existing law to perform work on county highways, while retaining the flexibility to adopt the UPCCAA in the future for unanticipated needs.

The Department of Public Works recommends that the County oppose AB 720. Opposition to AB 720 is consistent with existing policy to oppose legislation that erodes the County Road Commissioner's current authority to carry out work and with County opposition to AB 1409 of 2009, a similar bill. Therefore, **the Sacramento advocates will oppose AB 720**.

Support for AB 720 is unknown. It is opposed by the CSAC, the Regional Council of Rural Counties, and the Urban Counties Caucus. This measure is currently in the Assembly Local Government Committee awaiting a hearing.

AB 1354 (Huber), as introduced on February 18, 2011, would prohibit public entities from withholding retention progress payments made to a contractor for the construction of any public work or improvement beginning January 1, 2012.

Existing law prohibits the percentage of retention proceeds withheld to exceed the percentage specified in the contract between the public entity and the original contractor and prohibits the Department of General Services (DGS) from making payments upon such contracts in excess of 95 percent of the percentage of actual work completed plus a like percentage of the value of material delivered. Current law requires DGS to withhold not less than 5 percent of the contract price until final completion and acceptance of the project.

Specifically, AB 1354 would: 1) delete the prohibition in existing law against payments being made in excess of 95 percent of the work completed; 2) delete the requirement that DGS withhold not less than 5 percent of the contract price until final completion and acceptance of the project; and 3) prohibit the retention of any amount with respect to all contracts entered into on or after January 1, 2012 between a public entity and an original contractor, between an original contractor and a subcontractor, and between all subcontractors relating to the construction of any public work if improvement.

The Department of Public Works indicates that contracts administered by the department that involve the construction of highways, flood control facilities, water and sewer lines, and other infrastructure have followed the retention provisions contained in the Standard Specifications for Public Works Construction. DPW indicates that retention serves as an incentive for completion of the work in a timely manner and notes that Section 9203 of the PCC specifically requires that retention not be paid until the contract is complete and the project has been accepted by the agency.

For the types of work indicated above, DPW currently retains 10 percent from each progress payment. DPW states that retention funds may be used to satisfy the claims of unpaid subcontractors and suppliers, fund the cost of completing the work if the contractor fails to do so, and fund the cost of emergency work or work performed by agency forces when the contractor fails to respond. In addition, the amount of liquidated damages may be withheld from the amount of retention paid.

According to DPW, AB 1354 would remove a major incentive for completion, eliminates the value of stop notices and a subcontractor's or supplier's right to place a lien against retained contract funds, makes collection of liquidated damages more difficult for public agencies, and eliminates a tool for general contractors to ensure the completion of work by their subcontractors.

The Department of Public Works and this office recommend that the County oppose AB 1354 unless amended to exempt local agencies. The County has existing policy to support legislation to preserve and improve the County's ability to solicit and manage construction contracts. Because AB 1354 would weaken the County's ability to manage construction contracts and hold contractors accountable for the work completed,

opposition to this measure is consistent with existing County policy. Therefore, **the Sacramento advocates will oppose AB 1354 unless amended to apply to State agencies only.**

Support and opposition to AB 1354 is unknown. This measure is currently in the Assembly Business, Professions & Consumer Protection Committee awaiting a hearing date.

SB 515 (Corbett), as introduced on February 17, 2011, would: 1) require battery manufacturers, by September 30, 2012, to submit a stewardship plan (plan) to the Department of Resources Recycling and Recovery (CalRecycle) for review; 2) prohibit, on and after January 1, 2014, a producer, wholesaler, or retailer from selling household batteries unless CalRecycle certifies the submitted plan as complete; and 3) establish progressive collection goals for household batteries of 25 percent by 2015, and 45 percent by 2017, with proof of continuous meaningful improvement in the collection rate starting January 1, 2018 and after.

The bill would also require: 1) battery manufacturers to reimburse local public agencies for the cost of collection of household batteries and/or provide the local public agency with the location, hours, and contact information for the convenient collection points for household batteries that are located within the county where the local agency is located; 2) battery manufacturers to pay an initial plan review fee and subsequent annual administrative fees to CalRecycle for review of the plans, which would not exceed the cost to administer the bill's requirements; and 3) CalRecycle to post on its internet website a listing of the brands of household batteries for which the producer is in compliance, including if it has achieved the collection rate specified in the plan.

The stewardship plan must include: a description of brands of household batteries covered; annual schedule for achievement of the collection rate; convenient collection opportunities for consumer in all counties of the State, including existing collection points and programs; reuse and recycling rates; roles and responsibilities of key players along the distribution chain; how the producer will notify retailers and wholesalers of the program; financing; and education and outreach activities to maximize collection rates. CalRecycle has 45 days to certify the plan as complete or incomplete and the producer is allowed 45 days to resubmit the plan if deemed incomplete. Battery manufacturers who do not make a good faith effort to create a stewardship plan and comply with the collection goals are subject to a $5,000 penalty per day until the producer achieves compliance.

The Department of Public Works indicates that local governments and taxpayers are currently bearing the burden of funding the collection of used household batteries and the County has identified the need to further reduce the environmental impacts of

improper disposal of batteries. DPW states that SB 515 will require manufacturer's of household batteries to design, fund, implement and operate a product stewardship program to properly manage their end-of-life in order to sell or distribute their products within the State.

According to DPW, local governments and taxpayers pay an average of $800 per ton to manage household battery waste and battery manufacturers have no incentive to be concerned about the financial impact that their end-of-life products have on local governments and taxpayers. If enacted, DPW states that SB 515 will alleviate the burden placed on local governments and taxpayers to manage household battery waste and require manufacturers to introduce product stewardship into their business practices. This would help address the $200,000 plus costs annually for the County to manage household battery waste.

The Department of Public Works and this office recommend that the County support SB 515. Support is consistent with existing Board policy to support legislation that places greater emphasis on producer/manufacturer responsibility for the environmental impact of their products and the waste that is produced, and shifts end-of-life management and financial responsibilities from local governments to producers, in order to reduce public costs and encourage improvements in product design that promote environmental sustainability. It is also consistent with County support of SB 1100 of 2010, a similar bill. Therefore, **the Sacramento advocates will support SB 515.**

SB 515 is sponsored by StopWaste.Org and supported by California Product Stewardship Council; Californian's Against Waste; California Resource Recovery Association; and Los Angeles County Integrated Waste Management Task Force. Opposition to SB 515 is unknown. This measure is set for a hearing in the Senate Environmental Quality Committee on April 4, 2011.

SB 568 (Lowenthal), as introduced on February 17, 2011, would prohibit, on and after January 1, 2013, a food vendor from dispensing prepared food to a customer in a polystyrene foam food container.

"Food vendor" includes, but is not limited to, a restaurant or retail food and beverage vendor, an intinerant restaurant, pushcart, vehicular food vendors, a caterer, a cafeteria, a store, a shop, a sales outlet, or other establishment, including a grocery store or a delicatessen. It does not include a correctional facility, including but not limited to, a State prison, county jail, facility of the Division of Juvenile Justice, county- or city-operated juvenile facility or other State or local correctional institution.

"Prepared food" includes a beverage that is served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared for consumption, including "ready-to-eat food." Prepared food includes food that may be eaten either on or off the premises, and includes takeout food. It does not include raw, butchered meats, fish, or poultry that is sold from a butcher case or a similar retail appliance.

The Department of Public Works indicates that the Board of Supervisors has directed DPW to coordinate with all County departments to phase out the use of expanded polystyrene (EPS) food packaging at all County operations and to investigate expanding this phase out to include retail food service establishments throughout the unincorporated County areas. DPW indicates that a staff report in October 2008 entitled "Banning Expanded Polystyrene Food Containers at County Operations" noted that EPS food containers contribute disproportionately to litter and environmental concerns within Los Angeles County and alternative products can lower greenhouse gas emissions, have a reduced and less persistent impact on the natural environment and wildlife, and reduced health concerns for animals and humans.

The Department of Public Works and this office recommend that the County support SB 568. Support for this measure is consistent with Board policy adopted on September 21, 2010 which restricts the purchase and use of all EPS food containers at County facilities, offices, County-managed concessions, and by commercial food and beverage suppliers at County permitted events and County-sponsored events. Support is also consistent with existing policy to support legislation which promotes market development and manufacturer stewardship of: 1) products made of alternatives to polystyrene; and 2) environmentally friendly food packaging products. Therefore, **the Sacramento advocates will support SB 568**.

This measure is supported by Californians Against Waste. Opposition to SB 568 is unknown. This measure is set for a hearing in the Senate Environmental Quality Committee on April 4, 2011.

We will continue to keep you advised.

WTF:RA
EW:sb

c: All Department Heads
Legislative Strategist